

1 call. And I didn't think that was right.

2 Q But wasn't that your belief, that they would be
3 charged 40 cents?

4 A Yes.

5 Q And isn't that what you told your pals, your radio
6 pals that you were doing this with?

7 A I -- I said I believed that there was -- there
8 would be a charge incurred every time somebody called a
9 number. But I also said that is wrong. That's consumer
10 fraud that was taking place.

11 Q In other words, each time the phone was -- each
12 time you called somebody on this phone, they answered the
13 phone, Mr. Ackley billed them for 40 cents?

14 A I don't know for sure. But I believe that there
15 was some charge related to the -- to the practice.

16 Q And isn't it true that you envisioned running
17 these subscribers' bills up to like \$400.00 a month?

18 A No, I didn't envision that. I said what could
19 happen -- that could happen. It would be -- it would be
20 disastrous.

21 Q Disastrous for whom?

22 A For the -- for the person or for either Mr. Ackley
23 to try to explain why people had to pay ever time the phone
24 was called.

25 Q But weren't you the one who was calling -- calling

1 the phone?

2 A In that particular area, yes.

3 Q Wasn't that the plan, to run these bills up and so
4 these people --

5 A That was not the plan.

6 Q -- complained to Mr. Ackley that their bills were
7 too high?

8 A That was a speculation of what could occur. It
9 was not a plan to do it. It was a speculation of something
10 that could happen under the circumstances of what we
11 considered a wrongful operation.

12 Q But you had no intent to continue to call these
13 people and run the bills up? Is that your --

14 A I personally did not, no.

15 Q Yes, but how about your friends? Do you know if
16 they intended that?

17 A I don't know.

18 Q Wasn't that conveyed to you?

19 A I think Mr. Bennivenuti made some suggestion to
20 that effect, but I don't believe he ever did it.

21 Q When -- and I'm not too sure of -- by running Mr.
22 Ackley's -- I mean running these bills up on Ackley's
23 subscribers, how would that affect Mr. Ackley? How's --
24 how's the harm to Mr. Ackley by --

25 A I could only -- I could only guess that if he had

1 unsatisfied customers for providing a service that was
2 illegal, that -- that he'd have to explain to them why he
3 was doing this to them.

4 Q Now, for these bills that you were responsible
5 for, the people you called -- I don't know how many there
6 were -- did you make any restitution to any of the
7 subscribers?

8 A No, I wasn't asked to make any restitution.

9 Q Did you take any measures to see that the
10 subscribers were refunded for the bills that you and your
11 pals were --

12 A I wasn't aware of any such bill that anybody
13 incurred.

14 Q But wasn't it your position that every time you
15 called them, they were billed 40 cents?

16 A Well, Mr. Ackley -- which is obvious from the
17 testimony -- Mr. Ackley participated in this. He was quite
18 aware of what was going on. In fact, his name appears in
19 the transcript as monitoring this particular transmission.

20 Q But my question was -- if I remember your answer
21 before, was that every time you called, these people were
22 billed 40 cents.

23 A It was my belief that there was a charge. I think
24 it's 40 cents. Every time you call, someone gets charged 40
25 cents. Obviously, that's a common carrier service. And I

1 said that's what was wrong because a common carrier service
2 is not supposed to operate as a trunk system.

3 Q And there was no attempt by you to refund these
4 people for these bills that you and your pals had run up?

5 A We hadn't run up any bills of any significance
6 in --

7 Q I mean, just because it's insignificant,
8 therefore, restitution is not called for, is that correct?

9 A I don't know if a customer was billed and I don't
10 know if Mr. Ackley would be foolish enough to charge them.

11 Q But didn't you assume they would be billed. Isn't
12 that the -- wasn't that the gist of the conversation you had
13 with your pals?

14 MR. COLBY: Your Honor, this has been asked and
15 answered quite a few times.

16 MR. REIDELER: Well, he doesn't seem to want to
17 answer the question, Your Honor.

18 JUDGE LUTON: Overruled.

19 MR. COLBY: I think he's answered the question.

20 THE WITNESS: Repeat the question, Mr. Reideler.

21 BY MR. REIDELER:

22 Q There was no attempt to offer -- you felt there
23 was no need to -- to provide restitution to these people who
24 the bills that you had run up. And you said, no, you
25 didn't. You weren't sure you ran them up. And I said,

1 well, what -- excuse me, let me back up. You -- you made no
2 restitution or attempts to -- to make restitution to these
3 people for the bills that you had run up, is that correct?

4 A If -- that is correct.

5 Q Okay.

6 A But I -- certainly that presumes that bill was --

7 Q I think you've answered the question.

8 JUDGE LUTON: No, go ahead.

9 THE WITNESS: That presumes that a bill was run
10 up. And in most circumstances like this, if there is a
11 dispute, normally it is resolved in the favor of the -- of
12 the subscriber that if there is some question about the
13 practice. Mr. Ackley was well aware of this conversation.
14 And I had no way of knowing that he would -- in spite of
15 this conversation, would try to bill the customer and say
16 Mr. Schoenbohm caused you to have this bill.

17 BY MR. REIDELER:

18 Q Well, somebody is being -- either the customer is
19 being billed for 40 cents and Mr. Ackley -- and Mr. Ackley
20 is getting the money or Mr. Ackley wasn't able to bill these
21 people for 40 cents that you had -- and it was because of
22 you that the bill came up to begin with, isn't that correct?
23 Somebody's out 40 cents, either the customer or Mr. Ackley -
24 -

25 A Well, Mr. Ackley --

1 Q And this is because of you and your pals by
2 calling --

3 A My position was that Mr. Ackley had no business
4 billing for an illegal service that he was operating.

5 Q And that -- that justified you from -- from
6 stealing or essentially misappropriating money that was due
7 Mr. Ackley.

8 A I didn't appropriate anything.

9 JUDGE LUTON: Wait a minute. What issue is being
10 tried here?

11 MR. REIDELER: This is using the radio to -- for
12 access codes, Your Honor.

13 JUDGE LUTON: What issue was remanded?

14 MR. REIDELER: Well --

15 JUDGE LUTON: Whether Schoenbohm broadcast on HAM
16 radio about how to obtain illicit access codes.

17 MR. REIDELER: Yes, Your Honor.

18 JUDGE LUTON: Is that the issue that we're trying
19 now?

20 MR. REIDELER: Yes, it is, Your Honor.

21 JUDGE LUTON: It doesn't sound like it to me.

22 MR. REIDELER: Well, we got off on a little
23 tangent.

24 JUDGE LUTON: We sure did. Let's get back to
25 where we belong.

1 BY MR. REIDELER:

2 Q Mr. Schoenbohm. I'll direct your attention to the
3 statement on page 10 of the Joint Exhibit 1. Do you have
4 the Joint Exhibit 1 before you?

5 A What -- what is that essentially?

6 Q It begins with, "Now, listen, you know, it's
7 interesting how small, insignificant people like you and I
8 that don't amount to anything -- ".

9 A Yes.

10 Q What do you mean by that statement?

11 A It is the common people.

12 Q What do you mean, the common people?

13 A Common people, common man.

14 Q And common men should be able to use their radios
15 to acquire access codes, is that what you -- what you're
16 saying?

17 A No. I did not say that.

18 Q I'm asking -- you were just saying you mean common
19 man. I don't see an answer there.

20 A Well, in that statement, I was talking that
21 people, individuals sometimes have a way of gaining
22 information about illegal activities going on in private
23 industry and they can bring it to the attention of the
24 authorities against sometimes what are said to be
25 insurmountable odds.

1 Q Now, did you know anybody in the Ackley
2 organization before these events described?

3 A Yes.

4 Q And who was that?

5 A David Ackley.

6 Q And did you have prior dealings with Mr. Ackley?

7 A Yes, I did.

8 Q And were they amicable?

9 A No.

10 Q Did you dislike each other?

11 A Very much so.

12 Q So there is bad blood between the two of you?

13 A Yes.

14 Q And did this bad blood motivate the decision to
15 encourage others to assist you in exposing Mr. Ackley?

16 A If you would give me an opportunity to explain,
17 Mr. Ackley had been sanctioned by the FCC for jamming my
18 radio communications just prior to this incident. After
19 many years of investigation, engineers from the Sabana Deca
20 and the San Juan FCC office finally parked outside his house
21 and caught him in the act of jamming radio communication
22 that I was involved with. That -- that particular incident
23 was amateur radio communication.

24 But it also extended to the government work I was
25 doing with the police department and other safety services.

1 It was a serious, serious matter what Mr. Ackley was doing.
2 And I felt in having to demonstrate what he was doing was
3 illegal would give me leverage to stop him from jamming two-
4 way communication and amateur communication in the Virgin
5 Islands.

6 We are in a remote area. We are -- it took many,
7 many years for the engineers to have enough money in the
8 budget to come over and do something. And I didn't think
9 they were going to come again just on the strength of a
10 phone call. I did the best I could to try to expose the
11 illegal operations of something that was I felt injurious to
12 the -- the public good of the community.

13 Q So you really weren't -- you didn't want to get
14 with Mr. Ackley for all the naughty things that he had done?

15 A I had already had just gotten even. The FCC had
16 caught and exposed and sanctioned him. But that did not
17 stop his activities directed against me and my work.

18 MR. REIDELER: Thank you, Mr. Schoenbohm. I have
19 no further questions, Your Honor.

20 JUDGE LUTON: Redirect.

21 MR. COLBY: I have some questions, but not many.

22 REDIRECT EXAMINATION

23 BY MR. COLBY:

24 Q This Ms. Kaiser that you were asked about on cross
25 examination, who was she?

1 A That was the second wife of Henry J. Kaiser, the
2 industrialist.

3 Q The guy who had the Kaiser car?

4 A Yes.

5 Q And what was your relation to Ms. Kaiser?

6 A When I returned from the States after my leave of
7 absence, I lived with her and I worked for her. And I was
8 rebuilding a two-way radio communication system she had to
9 communicate with her employees on the Kaiser estate.

10 Q Okay. You say you lived with her, but not in any
11 meretricious sense.

12 A No.

13 Q I just wanted to make that clear. Now, how did
14 the issue of the call service arise with Ms. Kaiser?

15 A I was asked at the trial how I first came to learn
16 of the call service. And I had testified that I had used
17 the service as an agent of Ms. Kaiser.

18 Q Did Ms. Kaiser give you permission to do that?

19 A She most certainly did.

20 Q And that's how you found out about calls?

21 A Correct.

22 Q Now, was there any evidence at the trial that any
23 of the numbers you received from calls were obtained without
24 the knowledge of calls?

25 A None whatsoever.

1 Q Now, after your conviction, was the issue of --
2 no, let me strike that. In your judgement, did the
3 Government fulfill its burden to show that these telephone
4 numbers were unauthorized?

5 A No.

6 Q Did you appeal the Government's failure to fulfill
7 its burden?

8 A I was unable to. I did not.

9 Q Why were you unable to appeal?

10 A My attorney had been appointed as a judge
11 subsequent to my conviction. And what happened is that he
12 failed to file a Rule 29 motion in a timely fashion.

13 Q And that motion would have enabled you to raise
14 with an appeals court the question of whether the telephone
15 numbers that you used were in actuality unauthorized?

16 A Yes, under the sufficiency of evidence provision,
17 that was the -- the -- the point of that particular issue
18 was lost by not being raised properly.

19 Q So no appeals court ever passed on that issue?

20 A They did not.

21 Q At the time when you testified in the first
22 hearing in this proceeding, had you yet investigated to see
23 whether as a result of your employment with the Virgin
24 Islands Government, your earlier pension rights had
25 reattached themselves?

1 A At the time of the hearing --

2 Q Yes.

3 A -- I had not investigated the matter in any -- any
4 degree whatsoever.

5 Q So you knew that you were making contributions
6 again.

7 A I knew I was making contributions.

8 Q But you did not know whether you had the benefit
9 of the rights which you had lost when you inquired from the
10 first --

11 A I did not know exactly what benefits that I would
12 be reclaiming. I thought there would have been a lost for
13 the years that I did not participate in the system.

14 MR. COLBY: I have no further questions.

15 JUDGE LUTON: Recross?

16 MR. REIDELER: Thank you.

17 RECROSS EXAMINATION

18 BY MR. REIDELER:

19 Q Back to Ms. Kaiser, Mr. Schoenbohm, didn't the
20 U.S. attorney claim that you had used this number you got
21 from Ms. Kaiser in conjunction with your computer to piano
22 the numbers to find access codes? Wasn't that one of the --

23 A No.

24 Q -- positions taken by the U.S. attorney?

25 A No, it was not.

1 Q Was the term, piano, ever used at the trial?

2 A That was used by the prosecutor I believe to
3 suggest that was a means of obtaining access codes.

4 Q And weren't you accused of pianoing numbers to
5 find access codes?

6 A I don't think that was ever in the indictment. It
7 was described to the jury as one of the possible means of
8 obtaining access codes. Based on the transcript of the
9 particular tape recordings -- well, the term was used here
10 by Mr. Bennivenuti: "So obviously, Mr. Schoenbohm must have
11 had knowledge of that particular procedure." It was not
12 used by me. It was used by Mr. Bennivenuti in describing
13 something that -- that he was going to do.

14 Q Now, I take it that you don't agree with the
15 validity of your conviction, is that correct?

16 A No, I don't --

17 Q You feel you're improperly convicted of the crime.

18 A Yes, I do.

19 Q And you feel that you didn't prevail in this -- in
20 this matter because your attorney didn't file the proper
21 appeal, is that correct?

22 A I feel that if the proper appeal would have been
23 filed, I would have prevailed.

24 Q And did you sue your attorney for malpractice?

25 A No, I did not.

1 Q Is there some reason why you didn't?

2 A He's a personal friend of mine. He's now attorney
3 general of the Virgin Islands.

4 Q You felt no need to -- to bring any sort of action
5 against him for -- for destroying your -- your change of
6 appeal, is that correct?

7 A I -- I filed a motion on -- what it was referred
8 to as a pretrial motion of habeas corpus that I received
9 insufficient assistance of counsel insofar as he did not
10 file a timely appeal.

11 Q And what did the Court say about that?

12 A The Court said that he had been granted --
13 although incorrectly, been granted an extension by the judge
14 in which to perfect that appeal, that the judge had no
15 authority to grant that extension; that he was only doing
16 what the judge instructed him to do, so that was hardly a
17 situation of improper assistance of counsel based on the
18 fact that the appeal was filed on that particular issue out
19 of time.

20 Q Now, the Court of Appeals, the 3rd Circuit, when
21 you appealed to that -- that body, didn't they find that
22 your -- the evidence overwhelmingly supported the
23 conviction? Isn't that a fact?

24 A They said there is remaining untainted evidence in
25 dismissing the particular issue of -- of the radiate issue

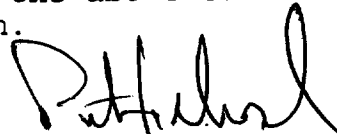
REPORTER'S CERTIFICATE

FCC DOCKET NO.: 95-11
CASE TITLE: Herbert L. Schoenbohm
HEARING DATE: April 1, 1997
LOCATION: Washington, D. C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date:

4-1-97



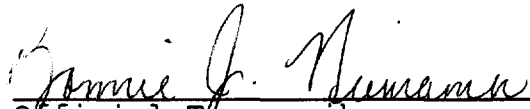
Official Reporter
Heritage Reporting Corporation
1220 "L" Street, N.W.
Washington, D.C. 20005
Peter Knight Shonerd

TRANSCRIBER'S CERTIFICATE

I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date:

4-6-97



Official Transcriber
Heritage Reporting Corporation
Bonnie J. Niemann

PROOFREADER'S CERTIFICATE

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date:

4-10-97



Official Proofreader
Heritage Reporting Corporation
Don R. Jennings

1 or not giving -- it was a harmless error of proceedings
2 which they stated there was sufficient remaining evidence
3 which to sustain the conviction. They cited, I believe,
4 four examples in their opinion. One of the examples was a
5 total mischaracterization of what took place at trial.

6 Q In other words, when the Court said, "Despite the
7 Government's mishandling of Exhibit 5-B, however, we affirm
8 that Mr. Schoenbohm" -- "we affirm Schoenbohm's conviction
9 on Count 1 because of the overwhelming evidence that
10 supports it", you're saying that the Court was incorrect
11 there?

12 A Yes, insomuch as they cited one of the supposedly
13 overwhelming pieces of evidence which was never introduced
14 at trial.

15 Q So your attorney was wrong. The jury was wrong.
16 And the Court of Appeals was wrong. Is that your position?

17 A Well, the Court said the attorney was wrong. And
18 the Court also said the prosecutor was wrong, but said that
19 under the standard for review at this late date, after
20 losing on time the issue that I mentioned about, there was
21 nothing they could do but affirm the conviction.

22 MR. REIDELER: I have no further questions, Your
23 Honor.

24 JUDGE LUTON: I'm glad because there's really no
25 point in chewing over what the Court of Appeals said. The

1 Court said what it said. That will do it, Mr. Schoenbohm.

2 THE WITNESS: Thank you, sir.

3 JUDGE LUTON: Thank you.

4 (Whereupon, the Witness was excused.)

5 JUDGE LUTON: Once again, the record is closed in
6 this proceeding. And I'm going to ask the parties to submit
7 proposed findings and conclusions within some reasonable
8 time. I am not particular about how much time the parties
9 might need or want to take to do this. Let's go off the
10 record just momentarily.

11 (A discussion was held off the record.)

12 JUDGE LUTON: Once again, the record here is
13 closed. The parties will submit proposed findings of fact
14 and conclusions of law by May 12th and a reply of proposed
15 findings by May 27th. Anything else that we must do? Thank
16 you. We will be in recess then. If you hurry, you might
17 catch that plane. I doubt it.

18 MR. SCHOENBOHM: I doubt it.

19 (Whereupon, at 12:26 p.m. on Tuesday, April 1,
20 1997, the hearing was concluded.)

21 //

22 //

23 //

24 //

25 //